IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.10518 OF 2004

Smt. Anusuya Harishchandra Mhatre & Anr..Petitioners

Versus

The State of Maharashtra through the
the Department of Rural Development &
Water Resources & Ors. .....Respondents

Mr.C.G. Gavnekar, for the Petitioners

CORAM: F.I. REBELLO, J.
DATE : 14th January, 2005

P.C.:

1. Petitioners were duly elected as members of the Panchayat when general elections were held to the said Panchayat. Along with them, 5 other candidates were elected to the reserved seats. The 6th seat for reserved candidates were not filled in. Subsequently the tribe certificates of th candidates who were elected against reserved seat was set aside by the Scrutiny Committee and consequently their elections were set aside. The result is that out of the membership of 9 there were only 3 validly elected candidates.

2. A Writ Petition came to be filed being Writ Petition No.6124 of 2004 to either hold by-elections or to hold general elections. By the judgment dated 9th August, 2004 a learned Division Bench of this Court was pleased to hold that as the majority of the seats are vacant, the business of the Grampancyat cannot be conducted in accordance with law and as such the Respondents are required to take action either under Section 145(1-A) of the Bombay Village Panchayats Act, 1958 to dissolve the Grampanchayat or conduct the by-election in respect of the seats which are vacant. The Respondent Nos.1 to 6 therein were directed to initiate action within a period

of 8 weeks. It was further directed that in the event action was sought to be initiated under Section 145(1-A) of the BOmbay Village Panchayats Act, 1958, the respondents were to give personal hearing to the remaining three persons who are in office before taking any action of dissolution of the Grampanchayat or appointment of an Administrator in the present case.

2. Subsequent to that order, the impugned order dissolving the Grampanchayat came to be passed, which is dated 7th December, 2004 after due notice to the three members. The Divisional Commissioner directed dissolution of the Grampanchayat. In the order it is also set out that attempts were made to hold bye elections on 18th February, 2003, 17th July, 2003, 25th February, 2004, 9th August, 2004 and 28th October, 2004. However, no nomination papers were received in the said election. It is consequent to the said dissolution that the present petition has been filed.

3. At the hearing of this petition on behalf of the petitioners it is principally contended that their term of office could not have been curtailed and bye elections ought to have been held. The impugned order discloses that the various attempts were made to hold bye elections. However, no candidates were forthcoming and consequently bye elections could not be held. Learned Counsel further draws my attention to Rule 4AA wherein it is set out that notwithstanding anything contained in these rules if the seat of a member reserved for the Scheduled Castes or Scheduled Tribes or as the case may be, the category of Backward Class of citizens and no candidate belonging to such Castes, Tribes or, as the

case may be, the category of Backward Class of citizens is available, then such seat for the same tenure shall be allotted by draw of lots to any of the categories for which the seat may be reserved under Section 10 of the Act. It is, therefore, set out that the reserved seat could be filled from other candidates.

3. Under Section 10 of the Bombay Village Panchayats Act, 1958 sub-section (2)(b) seats to be reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes in a Panchayat shall bear, as nearly as may be, the same proportion to the total of seats to be filled in by direct election in that Panchayat as the population of the Scheduled castes or, as the case may be, the Scheduled Tribes, in that Panchayat area bears to the total population of that area and such seats shall be allotted by rotation to different wards in a Panchayat. In other words a reading of this sub-section would show that number of seats will remain the same except that they can be rotated. Sub-section (3) then provides that if for any reason an election does not result in the return of the required number of qualified persons willing to take office, the Standing Committee shall, as soon as possible, appoint from persons qualified to be elected, such persons as are necessary to make up the required number, and the persons so appointed shall be deemed to have been duly elected under sub-section (1). From a cojoint reading of sub-sections (2) and (3) of Section 10, it would be clear that seats reserved for ST and SC candidates have to be filled in by those candidates. If they cannot be filled in that can be done by nomination as the Standing Committee think fit as contemplated under the provisions of the Bombay Village Panchayats Act,

1958. The Standing Committee is the Zilla Parishad. If this section is read then the Rule as sought to be read on behalf of the petitioners cannot be so read.

4. At any rate in the instant case considering the attempts made and the judgment of this Court it really cannot be said that the order of the Authority is without jurisdiction. At the most in the first instance the seats had to be filled in by holding bye elections. That failed and thereafter only the order for dissolution has been passed. In my opinion no interference is called for with the impugned order.

5. The Respondents, however, are directed to declare the fresh election programme in accordance with law and if no candidates are forthcoming for the reserved seats then to take steps in terms of Section 10(3) of the Act to see that the Panchayat is constituted as required by the provisions of the Act.

6. With the above observations, Writ Petition disposed of. No order as to costs.

(F.I.REBELLO, J.)